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# **IEERB Procedures:**

## **Tips for Practitioners**

Updated July 1, 2011

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## Introduction and Framework

- This document was produced by the Indiana Education Employment Relations Board to assist our customers in understanding the agency's operations under Indiana Code 20-29. It is not binding upon IEERB, nor is it legal advice. For further assistance, please visit the IEERB website, [www.in.gov/ieerb](http://www.in.gov/ieerb), or feel free to contact an IEERB staff member.
- Law and Rules: IEERB operates under Indiana Code 20-29 and its promulgated rules at 560 Indiana Administrative Code. Please note that, as of mid-2011, the promulgated rules are in the process of revision to adhere to statutory amendments passed in the 2011 legislative session. These provisions will be discussed in detail and can be found in Appendix D. This document is not a substitute for nor does it supersede these laws and rules.

## Initiation of Bargaining

Contract bargaining may not formally begin before August 1<sup>st</sup> of the 1<sup>st</sup> year of a State budget biennium or the 2<sup>nd</sup> year of a budget biennium where the parties are negotiating a 1 year contract.

## Funding Estimates and Certifications

- Before August 1<sup>st</sup> of the first year of a State budget biennium, the Indiana Department of Education (DOE) will provide the parties with an estimate of the general fund revenue available for bargaining.
- If a school corporation has gotten additional funding through an approved general fund referendum, the corporation must have the amount certified by the Indiana Department of Local Government Finance (DLGF) before bargaining commencement.
- Within 30 days after the first ADM count in the 1<sup>st</sup> year of a State budget biennium, DOE will provide a *certification* of estimated GF revenue.
- The DOE certification of estimated GF revenue and the DLGF certification of referendum amount (if applicable) must be the basis for all IEERB determinations throughout impasse proceedings.

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## Impasse Procedures

- Mediation
  - At any time at least 60 days after the commencement of bargaining [September 30 or later], if an impasse exists, the IEERB appoints a mediator from its staff or ad hoc panel
  - Mediation Requirements:
    - Must begin within 15 days of IEERB notice of impasse;
    - Maximum 3 sessions
    - Must result in either agreement or last best offers, including fiscal rationale
    - Mediation shall be completed within 30 days
    - Cost for the mediation shall be borne equally by the parties
  - Under rare circumstances, and only by mutual agreement of the parties, a contract dispute may proceed directly to factfinding without undergoing any mediation proceedings.
- Factfinding Procedures
  - If the parties do not reach agreement within 15 days after mediation ends, IEERB *shall* initiate factfinding.
  - Factfinding must culminate in the imposition of contract terms.
  - Each party must fully present its last, best offer, including fiscal rationale.
  - A factfinding proceeding may include a maximum of 2 days of testimony.
  - Hearings must take place in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located (or county with greatest number of students). IEERB interprets local unity of government to include school employers, so factfindings will continue to be held in school buildings.
  - The factfinder can only consider general funds and those funds certified by DOE and DLGF, unless the school funding formula allows other funds to be used for certain items.
  - The factfinder must select one of the parties' last-best offers.
  - The factfinder's report may only cover bargainable items.
  - The factfinder's report may not create deficit financing.

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- The factfinding process cannot last longer than 15 days from beginning to end.
  - The public hearing may not begin before October 1 of each year and must be concluded by December 31 of the same year.
  - The cost for the factfinding shall be borne equally by the parties.
  - **Appeal of Factfinding Report**
    - An appeal of a factfinder's decision must be filed within 30 days after receipt of the factfinder's decision
    - The Board's decision upon appeal is restricted to bargainable items
    - The Board's decision must not create deficit financing
    - The Board's decision may not go beyond a party's last, best offer
    - The Board must rule within 30 days of receipt of the notice of appeal
  - **Note on Impasse Procedures:** IEERB will be unable to continue its long-standing practice of flexibility in scheduling and deadlines. Mediations and factfindings will be scheduled like court dates- without checking on the convenience for the parties. This is a statutory process and must take priority.

### **Press Releases and Open Door Policy**

- It has been the policy for IEERB to notify the local media (newspapers only, not television or radio) of EACH Unfair Practice Hearing; Unit Determination Hearing; and Factfinding Hearing.
- Those notified include newspapers that cover the geographic area (county) of the school corporation involved, as well as all entities who have submitted Open Door requests. In addition, a copy of the press release is posted on the front bulletin board in IEERB's reception area and a copy is placed on IEERB's web page, in the Newsroom section.
- The media will be notified no later than 48 hours in advance of the date, time, place and nature of the hearing. These hearings will not be rescheduled within the 48 hour time frame established by the Indiana Open Door Law.
- For any hearings that need to be rescheduled at any time, including within 48 hours of the original hearing date, notice must be sent to the media at the same time notice is sent to the parties.

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## Unfair Practice Cases

- Types of Unfair Practices
  - IC 20-29-7-1 establishes 6 actions that constitute unfair practices if *committed by a school employer* (summarized below):
    - Interfering with rights granted to certificated employees by IC 20-29
    - Interfering with the independence of an exclusive representative
    - Encouraging or discouraging membership in an exclusive representative through discrimination
    - Discharging or discriminating against a certificated employee for using the legal processes established in IC 20-29
    - Refusing to bargain or discuss (as defined in IC 20-29)
    - Violating any other provision of IC 20-29
  - IC 20-29-7-1 establishes 4 actions that constitute unfair practices if *committed by a school employee organization or its agents* (summarized below):
    - Interfering with employee rights granted by IC 20-29
    - Causing or attempting to cause a school employer to discriminate against an employee in violation of IC 20-29
    - Refusing to bargain (as defined in IC 20-29)
    - Violating any other provision of IC 20-29
- Requirements and Chronology of an Unfair Practice Case

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- A complaint is filed with IEERB by a person and/or entity alleging that another person and/or entity has violated 1 or more provisions of IC 20-29-7-1 or -2. All complaints must be written, and IEERB does not have a fill-in-the-blank complaint form. Most complaints are submitted by attorneys or other representatives of the Complainant(s).
  - In addition to being written, all complaints must be under oath; signed by the Complainant(s); and served by the Complainant(s) to the Respondent(s) by certified mail or personal service.
  - The complaint must list the name, address, and telephone number of the Respondent(s), all Complainants, and all attorney(s) and/or representative(s) of the Complainants. The complaint must provide a summary of the alleged facts; the section(s) of the statute which are claimed to have been violated; and a statement of remedy sought.
  - All attorney(s) and/or representatives for either Complainant(s) or Respondent(s) must file an Appearance with IEERB and send a copy of the appearance to the other parties.
  - Upon receipt of a Complaint, IEERB appoints a Hearing Examiner. Often, the initial Hearing Examiner in practice serves as a mediator for the case.
  - The parties are permitted and encouraged to engage in mediation of unfair practice complaints, because mediation can result in cost-effective and timely resolution of these complaints. IEERB mediators serve to assist the parties in reaching resolution; they will not take action related to substantive pre-hearing matters and will not find facts, make conclusions of law, or issue any substantive order (other than to dismiss the complaint upon the request of the Complainant(s)).
  - Mediation continues to be an option even where the formal process of the case continues past this initial stage. If mediation is requested after the initial stage, IEERB will assign a mediator who is not the actual Hearing Examiner. As the best outcome of any case is that to which the parties have agreed, parties are urged to keep in mind the mediation option at all stages of the proceedings.
  - Respondent(s) must file a written Answer with IEERB within fifteen (15) days of the first Hearing Examiner's appointment (unless an extension is granted). The

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Answer must provide the name, address, and telephone number of Respondent's attorney or representative; and the Answer must specifically admit, deny, explain, or state a lack of knowledge as to each allegation in the Complaint. The failure to answer is taken as an admission of the truth of the Complaint or its relevant specific allegation(s).

- Where an initial mediation does not result in settlement of the case, a new Hearing Examiner will be assigned to begin the pre-hearing and hearing procedures. Our hearing examiners are selected from a pool of highly qualified, experienced professionals who serve in this capacity on an ad hoc basis.
- The parties may submit Motions to the Hearing Examiner prior to hearing, as appropriate, or may make Motions at the hearing.
- The Hearing Examiner (HE) also manages the discovery process and all pre-hearing matters involving the parties. Most HEs hold pre-hearing conferences, often by conference call.
- The Hearing Examiner first makes a determination as to whether IEERB has jurisdiction over the complaint. If jurisdiction is present, the Hearing Examiner conducts a hearing at which both sides may present their evidence, cross-examine opposing witnesses, brief the Hearing Examiner as to the relevant law and precedent, and all other due process related to the Hearing Examiner finding the facts and applying the law in the case.
- If the complaint is found to be frivolous, the filing party is liable for costs and attorney's fees.
- Unfair practice hearings are public hearings open to the public and the media.
- A court reporter creates an official transcript of the proceedings, which are often conducted in a room within a school building.
- The Hearing Examiner prepares a report detailing the HE's Findings of Fact, Conclusions of Law, and Recommended Order in the matter. IEERB then serves the HE's Report on all parties by certified mail.
- The Findings of Fact, Conclusions of Law, and Recommended Order becomes the Final Order of the board if no party files timely Exceptions to the report. Once a final order is issued, the order is subject only to judicial review.



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- Any party may file a Notice of Intent to File Exceptions to the report. Such Notice must be filed with IEERB within fifteen (15) days of service of the HE's Report on the filing party. After Notice is filed, the IEERB will notify the filing party of the date the Exceptions are due. The Exceptions, and supporting brief, must be related to matters of procedure, fact, law, or policy.
  - Any party that opposes the Exceptions may file an answering brief within the timeframe scheduled by the Board for that case.
  - When Exceptions are filed, the Board plays the role of a specialized court of appeals. The Board considers the record of proceedings, reviews the exceptions and briefs, and hears oral argument from the parties (if requested) at a meeting of the Board. As with all other types of appeals in the American legal system, the Board does not consider any new or additional evidence.
  - If appropriate the Board may remand the case back to the Hearing Examiner or reassign the case to another HE; otherwise, the Board issues its final order affirming, denying, or dissolving the HE's report in whole or in part.
  - Judicial review of a final order of the Board may be sought under the provisions of IC 4-21.5-5 (the Administrative Orders and Procedures Act).

## **Research**

- 560 IAC 2-5-1 requires all school corporations to file a copy of their negotiated contracts/collective bargaining agreements with IEERB within 30 days of the date the contract is ratified. When school corporations comply with this promulgated rule, they assist the IEERB in keeping accurate records. Timely submission of contracts leads to timely entry of documents into the IEERBSearch document management system, allowing for complete research data.

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## APPENDIX A: GLOSSARY

**BARGAINING AGENT** -- An organization which is the exclusive representative of all workers in a bargaining unit, both members and non-members. An employer may voluntarily recognize a particular employee organization as a bargaining agent for his workers, or the question of representation may be settled by a secret ballot election conducted by IEERB.

**BARGAINING UNIT** -- A group of employees that the employer has recognized and/or IEERB has certified as appropriate to be represented by an employee organization for the purpose of collective bargaining. One way of judging the appropriateness of a bargaining unit is to determine a community of interest among the employees. Other typical criteria are bargaining history, employee desires, and employer structure.

**CERTIFICATION** -- The formal determination by IEERB that a particular employee organization is the majority choice, and hence the exclusive bargaining agent, of all employees in a given bargaining unit. The determination usually follows a secret ballot election of the workers in the bargaining unit. Certification usually carries with it a ban for a set period of time on elections to choose another bargaining agent, called an election bar.

**CERTIFIED EMPLOYEE ORGANIZATION** -- The organization which IEERB has certified as the official representative of the employees in the bargaining unit for the purposes of collective negotiations. Certification usually follows a representation election.

**CERTIFICATED EMPLOYEE** -- An employee of a school corporation whose individual contract requires the employee to hold a license or permit from the Indiana Department of Education, Division of Professional Standards, or a teacher at a charter school established under IC 20-24.

**COLLECTIVE BARGAINING** -- A method of determining conditions of employment through negotiations between representatives of the employer and the exclusive representative of the employees. The results of the bargaining are set forth in a collective bargaining agreement. Collective bargaining, which determines conditions of employment for all workers in a bargaining unit, is to be distinguished from individual bargaining, which applies to negotiations between a single employee and the employer.

**CONCILIATION** -- Attempts by a neutral party to reconcile opposing viewpoints in a labor dispute in order to help the negotiating parties come to a voluntary settlement. In current

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usage, the terms conciliation and mediation are used interchangeably, although traditionally a “conciliator” played a less active role than a “mediator” in a labor dispute.

**EMPLOYEE RIGHTS** -- Those collective bargaining rights, stipulated in IC 20-29, which are given to employees. Alleged violations of these rights may be brought before IEERB for redress. **EXAMPLE:** Employees have the right to form, join, or assist employee organizations, to participate in collective bargaining, and to engage in other activities, individually or in concert, for the purposes of collective bargaining, and they also have the right to refrain from any and all such activities.

**EXCEPTIONS and OBJECTIONS** – Exceptions are appeals filed on a Hearing Examiner’s unfair practice case determination. Objections are appeals filed on a Hearing Officer’s representation case determination.

**EXCLUSIVE REPRESENTATIVE** -- The employee organization which has won the right, through a secret ballot election, by the voluntary recognition of the employer, or by an IEERB order, to be the sole representative of all the employees in the appropriate bargaining unit.

**FACTFINDING** -- A method of impasse resolution that involves investigation of a labor-management dispute by a neutral third party, whether it be an individual, board, or panel. A factfinder holds formal or informal hearings, may subpoena documents or individuals, and submits his report to IEERB, which in turn submits it to the parties and, later, to the public.

**GOOD FAITH BARGAINING** -- The requirement that the two parties in negotiations engage in a bargaining process at reasonable times with a willingness to reach an agreement on new contract terms. Good faith bargaining does not require that either party make a concession or agree to any proposal.

**HEARING EXAMINER/OFFICER** – The official appointed by IEERB to take testimony and make findings and conclusions on either an unfair practice or representation case. IC 20-29 establishes that hearing *examiners* administer unfair practice cases, while hearing *officers* administer representation cases; however, the terms are often used interchangeably.

**IMPASSE** -- That point in labor-management negotiations at which either party determines that no further progress can be made toward reaching an agreement. In public sector labor relations, impasses are often resolved by the intervention of a neutral third party, such as a mediator or fact finder.

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**INTERLOCUTORY ORDER** – An order that relates to some intermediate matter in the case; any order other than a final order.

**MANAGEMENT CLAUSE** -- A provision in the collective bargaining agreement which describes the scope of management rights, functions, and responsibilities. The clause sets forth those activities which management can carry out without obtaining the agreement of the exclusive representative.

**MEDIATION** -- An attempt by an impartial third party, called a mediator, to bring together the parties in a labor dispute. The mediator, however, has no power to force a settlement. The mediator operates primarily through persuasion to help the negotiating parties come to an agreement.

**MEDIATOR** -- An individual who acts as an impartial third party to help settle labor-management disputes. The mediator's role is to meet with parties, act as a go-between, and help the parties discover areas of agreement in order to reach a settlement in negotiations without a strike.

**NEGOTIATOR** -- The person who represents the employer or exclusive representative in collective bargaining negotiations to reach an agreement. Often committees or "teams" represent each party, and one of the committee members acts as chief negotiator or spokesperson for the group. The chief negotiator is often the most experienced individual on the team, although occasionally the chief negotiator will not be the person with the authority to commit the team to a position. The chief negotiator will serve only as a spokesperson and for information; this person will rely on persons who have the authority to make contractual commitments.

**RATIFICATION** -- Formal approval of a newly negotiated agreement by vote of the organization's members who are affected. **EXAMPLE:** Indiana Code 20-29 specifically requires the employees affected by a contract negotiated between representatives of teachers and school board to ratify it. Typically, however, ratification procedures are provided for in the employee organization's constitution.

**REFUSAL TO BARGAIN** – In an unfair practice case, findings made by IEERB indicating that either the employer or the exclusive representative has failed to bargain "in good faith" according to the requirements of the statute. The refusal to bargain may be indicated by specific actions or by the overall behavior of the exclusive representative or employer during the negotiating period.

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**REPRESENTATION HEARING** -- The procedures followed by IEERB to determine whether a particular employee organization represents the employees in an appropriate bargaining unit or a sufficient number of employees to warrant holding a representation election. Also covers hearings held in unit determination cases, which are requests for determination on whether a particular position lies within the bargaining unit.

**SCOPE (of bargaining)** -- The range of issues that are made bargainable by IC 20-29.

**SEVERABILITY (Separability) CLAUSE** -- The part of a law or contract which permits sections of the law or contract to remain in effect while other sections are declared invalid by decisions of the courts; also called a savings clause. A collective bargaining agreement may incorporate a savings clause so that if part of the agreement is held to be invalid or unenforceable, the remainder of the contract will remain in effect.

**UNFAIR PRACTICE** -- A practice on the part of either employee organization or management which violates the provisions set forth in IC 20-29. Examples on the part of employee organizations are: 1) causing an employer to discriminate against an employee on the basis of that employee's membership in a union; 2) refusing to bargain collectively with an employer; 3) interfering in an employer's exercise of his rights under the statute. Examples on the part of management are: 1) controlling or interfering with employee organizations; 2) discriminating against workers for their support for or activity in an employee organization; 3) retaliating against workers for complaining to IEERB; 4) refusing to bargain collectively with the exclusive representative.

**UNIT DETERMINATION HEARING** -- See REPRESENTATION HEARING.

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## APPENDIX B: CASE NUMBER ASSIGNMENT

*SAMPLE:* U-05-22-5555

- First letter represents:

U = Unfair Practice Complaint  
C = Compliance  
R = Representation/Unit Determination  
M = Mediation  
F = Factfinding

- Next, two digits represent:

U, C, R = Calendar year filed.

04 = 2004

05 = 2005

M, F = School year being bargained.

07 = 2007-08 year being bargained.

08 = 2008-09 year being bargained

- The next two digits are the specific number of that particular type of case filed.  
In the sample above, this is the 22<sup>nd</sup> unfair practice complaint filed in 2005.

- The final 4 digits are the school corporation number.  
NOTE: All school corporation numbers end in "0" or "5"

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## APPENDIX C: UNFAIR PRACTICE CASE STEPS

1. A Complaint charging unfair practice is filed with IEERB. *560 IAC 2-3-2*
2. IEERB Chairman issues letter appointing Hearing Examiner (HE) and Case Administrator (CA). *560 IAC 2-3-1* The HE will be either a member of IEERB's full-time staff or an ad hoc panelist. The CA will be a member of IEERB's full-time staff. The CA handles case management, flow of paperwork, and other practical needs for each complaint.
3. Answer from Respondent party due 15 days from the date of the HE/CA appointment letter. *560 IAC 2-3-5(b)*
4. Order Setting Pre-Hearing Conference (initiated by HE) *560 IAC 2-3-14(7)*
5. After pre-hearing conference is held, HE prepares Order Re: Pre-Hearing Conference, setting forth dates to exchange witness and exhibit lists, any pre-hearing briefs, any stipulated facts, and the actual hearing date, time, and location. IEERB arranges with Court Reporter to attend hearing. *560 IAC 2-3-20(a); 560 IAC 2-3-13; 560 IAC 2-3-19*
6. Two weeks prior to hearing, Press Release is prepared and mailed (initiated by secretary once HE provides pertinent information). *IC 5-14-1.5-3(a)*
7. A party may request Subpoenas from IEERB for witnesses to attend hearing. *560 IAC 2-6-6*
8. Hearing is conducted. At end of hearing, date set for Post-Hearing Briefs to be filed (if allowed). *560 IAC 2-3-20(c)*  
  
Arrangements made for transcript preparation. All parties must sign for their request for transcript. (It is much cheaper to order all at once rather than later). *560 IAC 2-3-20(c)*
9. Once transcript arrives in IEERB office, CA prepares letter informing parties of the cost needed to pick up their copies. Sometimes, this is when the Post-Hearing Briefing schedule is arranged.
10. Once all briefs arrive to HE, a report is written within 90 days and served upon all parties involved in the case, not just the spokespersons. *560 IAC 2-3-21(b)*

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11. Parties have 15 days to file Exception to Hearing Examiner's Report with the Board. *560 IAC 2-3-22(a)*

CASES BEFORE THE BOARD

12. Parties have 15 days to file Exception to Hearing Examiner's Report with the Board. *560 IAC 2-3-22(a); 560 IAC 2-3-22(b)*

Parties have 30 days to appeal a Factfinder's Report. *IC 20-29-6-18.*

13. Upon receipt of Exceptions, Chairman reviews document. Should the parties request oral argument (which they must do in order to be granted an oral argument), the Chairman then determines a date to hear oral arguments, ensuring the other Board Members can attend to get a quorum. An Order is prepared and mailed to parties involved, which arranges a date for answering briefs. An Order will be issued at a later date setting the date of the oral argument before the Board. *560 IAC 2-3-22(c)*
14. Upon conclusion of the public meeting, the Board may:
- (A) Make a determination at that time; *560 IAC 2-3-23(c)*
  - (B) Table the issue for a future meeting;
  - (C) Remand the case to a hearing examiner for further investigation, either of the entire case or an issue of the case; or *560 IAC 2-3-23(b)*
  - (D) Make a determination on a parties' request for rehearing due to (1) newly discovered material evidence or (2) the evidence could not have been produced during the evidentiary hearing. *560 IAC 2-3-23(c)*
15. An Order is prepared and circulated to members for signatures. Once it is returned to the IEERB office, copies are made and forwarded to all parties involved. Original will be placed into case file, with a copy placed in the Board file.
16. Within 30 days of receipt of this Order, the parties may appeal the Board's decision in court. A Praecipe for Record will be filed. This initiates the preparation of IEERB's case file for the requesting party to file with the court. *560 IAC 2-3-26*
17. The Board may enter the interlocutory orders, after summary hearing, it considers necessary in carrying out the intent of the statute. *IC 20-29-7-4 (f)*. As a practical



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matter, such “interlocutory orders” are difficult to obtain because the moving party must fulfill the high standards required for an injunction.